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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.893 OF 2007

M/s. Desai Traders ...Petitioners
v/s.
Mahalaxmi Tyres & Auto Services ...Respondents

Mr.A.B.Vagyani for the Petitioners
Mr. D.P.Adsule for the Respondents

CORAM : B.H.MARLAPALLE,J.
DATED : 19th October, 2007

P.C.

Heard Mr.Vagiyani,learned counsel for the Petitioner.

2. Criminal writ petition no. 2922/2005 was disposed by this Court with directions to decide the appeal expeditiously and petition was allowed. On remand the appeal came to be decided on 17-11-2006 by the learned IInd Ad-hoc Additional Sessions Judge, Kolhapur and the appeal has been allowed by setting aside the judgement and sentence passed by the learned Judicial Magistrate First Class in SCC no.16441/1997. The case was remanded to the learned Judicial Magistrate, First class for retrial on the stage of recording of statement of accused under section 313 of Cr.P.C.

3. Consequent to the order passed by the lower appellate Court, the learned Judicial Magistrate, First

class at Kolhapur decided the case a fresh on 22-12-2006 and acquitted accused no.3 and convicted accused no.2 under section 138 of the Negotiable Instrument Act. Accused no.2 has been directed to pay compensation of Rs. 1 lac and he was sentenced to suffer simple imprisonment for six months.

4. The petition has been filed by the original complainant and if the accused no.2 who is the Managing Partner of accused no. 1 is aggrieved by the order of conviction, he has the statutory remedy of filing an appeal against the order of conviction. Such an appeal can be filed by the accused no. 1 through accused no.2 and,therefore, the writ petition under Article 227 of the Constitution cannot be entertained.

5. The petition is rejected as not maintainable. It is made clear that if the petitioner has filed an appeal, the same will have to be decided on its own merits.

[B.H.MARLAPALLE,J.]